



**TOWN OF CHARLTON
784 CHARLTON ROAD
CHARLTON, NEW YORK 12019**

Telephone: 518-384-0152

Fax: 518-384-0385

SUPERVISOR
Ferdinand J. Acunto

TOWN BOARD
Charles T. McLoughlin
Bernard Schroeder
Alan R. Grattidge
Dorothy Mitchell

TOWN CLERK
Gail S. Hanchar

**SECRETARY TO
SUPERVISOR**
Kathy M. Hanley

April 2, 1998

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Senator Daniel P. Moynihan
Russell Senate Office Bldg., Rm. 464
Washington, DC 20510

Senator Alfonse M. D'Amato
Hart Senate Office Bldg., Rm. 520
Washington, DC 20510

Representative Gerald B. Solomon
285 Broadway, Gaslight Sq.
Saratoga Springs, NY 12866

WT 97-197
MM 97-182
DA 96-2140

Dear Senator Moynihan, Senator D'Amato and Representative Solomon:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts that violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

Radio and TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. The FCC's proposed rule would prevent municipals from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! All appeals of zoning and permit denials would go to the FCC, not to the local courts.

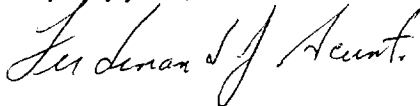
This proposal is astounding when broadcast towers are some of the tallest structures known to man -- over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High definition Television quickly. The Wall Street Journal and trade magazines' state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it did not like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3195; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-505-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,



Ferdinand J. Acunto, Supervisor
Town of Charlton
784 Charlton Road
Charlton, New York 12019

CC: Mr. William Kennard, Chairman Designate
Federal Communication Commission
1919 M Street, NW
Washington, DC 20554

Mr. William F. Caton, Acting Secretary
Federal Communication Commission
1919 M Street, NW
Washington, DC 20554